**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

D. B. CIVIL SPECIAL APPEAL (WRIT) NO. 739/2002
IN
S. B. CIVIL WRIT PETITION NO. 3890/2000

Smt. Savita Devi Sharma v State of Rajasthan & Ors.

Date of Judgment: February 9, 2007.

Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice R. S. Chauhan

Mr. R. P. Singh for the Appellant,
Mr. G. S. Gill, Additional Advocate General for the State.

(Per R. S. Chauhan) J:

Denied the benefit of family pension and of the interest on the arrears of pension, amount of commutation, etc. a retired Judge of this Court, Mr. Justice Mahendra Bhushan Sharma, had challenged the Judgment dated 13-12-2001 passed by Learned Single Judge, whereby the Learned Single Judge had partly disallowed the writ petition filed by him. During the pendency of this appeal, Mr. Justice Sharma expired. Consequently, his wife--Mrs. Savita Devi Sharma—was brought on record as his legal representative. (For the sake of clarity,

while Mr. Justice Sharma shall be referred to as ‘the Petitioner’, his wife, Smt. Sharma shall be referred to as ‘the appellant’, for short)

In a nutshell the facts of the case are that on 30-9-1993, the petitioner had retired as a Judge of this court. After his retirement, on 6-7-1994, he was appointed as the Lokayukta for a period of five years under the Rajasthan Lokayukta and Uplokayukta Act, 1973 (henceforth to be referred to as ‘the Act of 1973’, for short). Subsequently, the petitioner retired from the said post on 6-7-1999. Three months prior to his retirement, the petitioner’s pension papers were submitted to the Government of Personnel (Group A III), Government of Rajasthan. A claim for pension @ Rs. 14630/- for every completed year of service as Lokayukta for five years, aggregating to Rs. 73,150/- p.a. was made. A claim for re-computation of amount of gratuity on the basis of pay and dearness allowance payable to the petitioner treating the service of the Lokayukta as separate for the purpose of calculating the amount of gratuity as also the right to the family pension was also made. Vide order dated 6-

12-1999, the Government directed that the petitioner be paid Rs. 34, 864/- p.a. as pension w. e. f. 7-7-1999, in addition to the pension as retired Judge of this High Court. Thereby the Government had clubbed the services rendered by the petitioner both as a Judge of this Court and as a Lokayukta for the purpose of calculation of pension. The petitioner challenged the action of the Government by filing a writ petition before this court. Vide judgment dated 13-12-2001, the learned Single Judge partly allowed the petition. The learned Single Judge directed the State to pay the pension to the petitioner for the post of Lokayukta treating the petitioner's service as Lodkayukta independent from that of a High Court Judge, and not to place the ceiling limit on his pension as prescribed under the High Court Judges (Conditions of Services) Act, 1954 ('the Act of 1954', for short). The learned Judge further directed that the petitioner shall be paid gratuity calculating the same on his pay as defined in FR 9 (21) (a) (i) plus dearness allowance admissible on the date of his retirement. However, with regard to the petitioner's claim for family pension, the learned Single Judge left the question open. The learned Judge also did not

direct the payment of any interest on the arrears of pension, amount of commutation etc. Hence, this appeal before this us.

Mr. R. P. Singh, the learned counsel for the appellant, has raised two contentions before us: firstly, the appellant is entitled to the family pension under Section 17 A of the Act of 1954. However, the same has been denied to her. Therefore, the learned Single Judge has erred in leaving the said issue open. Secondly, since the pension was denied to the petitioner illegally, he was entitled to receive interest thereupon and upon the commutation of leave etc. However, the learned Single Judge has ignored this aspect of the case.

Mr. G. S. Gill, the learned Additional Advocate General for the State in all fairness has conceded to the two contentions raised by the appellant.

According to Section 5(4) of the Act of 1973, “the salary, allowance and pension, payable to and conditions of service of the Lokayukta or Up-lokayukta shall respectively be the same

as those of the Chief Justice or a Judge of the High Court of Rajasthan." Furthermore, according to Section 21 of the Act of 1973, the State is empowered to enact any Rules regarding the allowance, pension or other condition of service with regard to the Lokayukta or Up-lokayukta, respectively. Consequently, the State framed the Rajasthan Lokayukta and Up-lokayukta (Condition of Service) Rules, 1974 ('the Rules of 1974', for short). According to Rule 13 of the Rules of 1974, where the Rules are silent about the condition of service, the same shall be covered by the Act of 1954. Admittedly, in the Rules of 1974 no provision has been made for grant of family pension to the Lokayukta or the Up-lokayukta. Hence, one has to turn to the Act of 1954, for the said Act would cover the grant of family pension. Section 17 A of the Act of 1954 is as under:

> Family pension and gratuities:-
>
> > Where a judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986, dies, whether before or after retirement in circumstances to which Section 17 does not apply, family pension calculated at the rate of sixty percent of the pension admissible to him on the date of his death shall be payable to the person or persons entitled thereto and the amount so payable shall be paid from the day following the date of death of the judge for a period of seven years or for

> a period up to the date on which the judge would have attained the age of sixty-five years had he survived, whichever is earlier, and thereafter at the rate of half of the family pension so admissible subject to a minimum of three hundred and seventy-five rupees per month.

Thus, certainly under the above provision, the appellant is entitled to receive the family pension.

The government is under a legal obligation to pay the pension and the commutation of leave as soon as it becomes due to a person. Although the petitioner had submitted his pension papers three months prior to his retirement from the post of Lokayukta, the respondents had maintained a studied silence over the entire issue. The omission on the part of the respondents is most arbitrary, unfair and unjust. If a Lokayukta and a former judge of this court has to wait for his pension, one wonders about the plight of the ordinary citizen who have to receive his pension. The government should be vigilant and should ensure that the pension is paid to a person as soon as it becomes due. The omission on the part of the government is flooding this court with pension cases. This tide has to be

stemmed. Since the petitioner had been denied his due pension and his commutation of leave, we direct the government to pay an interest of 12% to the appellant on the pension paid to the petitioner, the commutation of leave from the date the pension and the commutation were due till the date of realization.

The State is directed to pay the family pension in accordance with Section 17 A of the Act of 1954, along with an interest @ 12% per annum from the date the family pension was due to the appellant. The appellant shall also be entitled to an interest of 12% per annum on the arrears of pension paid to the petitioner from the date it fell due till the date it was paid to the petitioner. The said amount shall be calculated and paid to the appellant within one month of the date of receipt of the certified copy of this order. There shall be no orders as to cost.

R. S. Chauhan J. Shiv Kumar Sharma J.